

STOCKBRIDGE-MUNSEE COURT OF APPEALS

**Mohican Nation
Community**

Stockbridge-Munsee

Kimberly Vele,
Appellee-Plaintiff,
vs.

Stockbridge-Munsee Community et. al,
Appellant-Respondent.

OPINION

Case No. AP-2012 CV 0002

Presiding Judges Panel, Serving Stockbridge-Munsee Court of Appeals- Honorable Stanley R. Webster, Panel Chair, Oneida Tribal Judicial System-Appellate Court, Honorable Shannon Cobe, Lac Du Flambeau Tribal Court, and Honorable Alton Sonny Smart, Bad River Tribal Trial Court.

INTRODUCTION

This case originated as the result of action taken at a meeting of the Tribal Council, attended by tribal member, Kimberly M. Vele, when the Tribal Council voted against hiring her to the position of lead attorney for the tribe. Ms. Vele, filed suit in Tribal Court against the tribe, claiming that the vote to deny her employment as the lead attorney violated the Tribe's Employment Preference Law. The Tribal Court held that the "two council members should have recused themselves" nullified both votes, and ordered the tribe to appoint Ms. Vele to the position of lead attorney.

The Stockbridge-Munsee Community, et al, appealed the Trial Court's decision to the Court of Appeals alleging errors of law, and the Tribal Court's disregard of the Tribal Constitution vesting the authority to hire legal counsel exclusively in the Tribal Council.

BACKGROUND

March 6, 2012, the Tribal Council voted against hiring Kimberly M. Vele as Lead Attorney for the Stockbridge-Munsee Community.

March 9, 2012, Ms. Vele filed a motion, seeking a temporary injunction to remove posting of the Lead Attorney job description for the Stockbridge-Munsee Community in Tribal Court, Case No. 2012-CV-0002.

March 23, 2012, the tribal court granted the injunction and ordered Respondents to remove posting of the job description.

March 29, 2012, Vele filed a motion for contempt, alleging the tribe violated the court's order issued on March 23, 2012.

April 9, 2012, the Tribal Court granted Ms. Vele's motion for preliminary injunction, issued a scheduling order, found the tribe in contempt and ordered the tribe to pay Ms. Vele \$700.00.

May 15, 2012, the Tribe filed a motion for summary judgment.

May 21, 2012, Tribal Court denied the motion for summary judgment and conducted hearing on the merits of the petition.

July 25, 2012, the Tribal Court issued its decision in Case No. 2012-CV-0002, "ordered the tribe to appoint Ms. Vele to the position of lead attorney for the Stockbridge-Munsee Community effective immediately, or as soon as Ms. Vele can make the transition. The court also orders the Respondents to pay Petitioner \$700 immediately, for being in contempt of court for their failure to comply with the this court's order dated March 23, 2012".

August 15, 2012, Respondent, Stockbridge-Munsee Community et al., filed its Notice of Appeal, pursuant to Appeals Section 23, of the Stockbridge-Munsee Tribal Court Rules of Civil Procedure alleging that the Tribal Court made five errors of law:

(1) misinterpreted and misapplied Resolution 028-07,

- (2) applied the incorrect legal standard governing a claim alleging an ordinance violation,
- (3) disregarded the Tribe's law governing review of a hiring decision made by the Tribal Council,
- (4) misinterpreted and misapplied Section 14 of the R.C.P., and
- (5) disregarded provisions of the Tribal Constitution that vest the authority to hire legal counsel exclusively in the Tribal Council. and

Appellants filed a Request for Stay of the tribal trial court's Injunctive Order, and extension of time to file appellate brief.

The Chief Judge, in accordance with the Tribe's Court Code, approved and appointed three tribal judges to serve on the Stockbridge-Munsee Court of Appeals Panel. The Panel after review, denied Appellant's Request for Stay of Injunctive Order, and granted extension of time to file appellate brief. The Appellant-Respondent and Plaintiff-Appellee completed the briefing process.

The Court of Appeals reverses and dismisses the Tribal Court's decision and order in Case No. 12-CV-0002 (7-25-12).

JURISDICTION

As the matter presented for review is constitutional in nature, we review the Tribe's Constitution, including issues of personal, subject matter, and territorial jurisdiction.

A tribal member of the Stockbridge-Munsee Community filed suit in Tribal Court over the Tribal Council's vote, at a meeting on tribal land, located within the boundaries of the Stockbridge-Munsee Community Reservation, established that the Tribal Court had personal and territorial jurisdiction over this case. The tribal member's dispute, deals with a decision of the Tribal Council, was filed with the Tribal Court, satisfies the issue of subject matter as it appears in Chapter 1, Stockbridge-Munsee Court Code, Section

1.2, "Tribal Court shall exercise jurisdiction over all matters . . . including controversies arising out of the Constitution . . . ordinances . . . resolutions" . . .

Jurisdiction for appellate review appears in the Stockbridge-Munsee Tribal Court Rules of Procedure, Section 23 (A) "In all actions before the Court, the defendant may appeal to a Court of Appeals"

On appeal, the Stockbridge-Munsee Community, et al. sufficiently alleges that the Tribal Court made errors of law, violated the separation of power doctrine, by disregarding the Tribe's Constitution expressly vesting authority to hire legal counsel in the Tribal Council, and based on an alleged conflict of interest, invalidated votes of the Tribal Council. The grounds for appeal appear in Chapter 1-Stockbridge-Munsee Tribal Court Code, Section 1.6 (L)(3) . . . "principal grounds for appeal are that the Trial Court made a serious error of fact or law" . . .

STANDARD OF REVIEW

As the matter presented for review is constitutional in nature, we review the Tribal Court's decision de novo. Review of the Tribal Constitution is essential in determining where the authority to hire legal counsel is vested and what, if any, is the scope of judicial authority to review that decision. The Tribal Council is vested with the authority to hire legal counsel by the Tribal Constitution. The issue rests on whether the Tribal Court has jurisdiction to invalidate votes of the Tribal Council.

DISCUSSION AND ANALYSIS

The Stockbridge Munsee Tribal Constitution, Article VII, Section 1(b) vests the authority to hire legal counsel solely in the Tribal Council. When such authority is set aside, disregarded, or changed by Tribal Court, it raises questions concerning jurisdiction of Tribal Court and the powers of government set forth by the Tribe's Constitution.

Article IV, Section 1 of the Constitution, establishes the Tribal Council as the Tribe's governing body, "The governing body of the Stockbridge-Munsee Community shall be the Tribal Council" . . .

Article VII, Section 1 (b) of the Constitution establishes that the Tribal Council hires legal counsel, "To employ legal counsel, the choice of counsel" . . .

The issue in this case involves the constitutionality of a Tribal Council action against the hiring of legal counsel, and the extent of jurisdiction exercised by Tribal Court to nullify votes of the Tribal Council.

Tribal Law shows that the Tribal Court has jurisdiction to review acts of the Tribal Council. For example, if the allegation that the Tribal Council failed to meet procedural requirements such as; convening pursuant to proper notice, or whether quorum requirements were satisfied, the Tribal Court may review such issues. In other words, there have been no allegations that, the Tribal Council in this case, acted without proper authority. The Tribal Council does not have a personal financial interest in the selection of the Tribal attorney; political likes or dislikes do not constitute financial interests, nor do personal bias for or against any applicant require a member of the tribal council to abstain from voting. The Tribal Council was exercising its legislature power when voting against the hiring.

However, the separation of powers of tribal government and its judiciary precludes the Tribal Court from substituting its own judgment in the hiring process for that of the Tribal Council. The Tribal Court in this case substituted its ethical judgment for that of the individual Tribal Council members when it determined that two of them should have recused themselves, and thereby the Tribal Court changed the result of the Council's vote. The Tribal Court can review the Tribal Council's application of the Tribe's own law, but it may not interject its own opinion as to the ethical basis for recusal (which is a subjective, non-statutory matter) and thereby void the votes of individual Council members.

This Panel concludes that the Tribal Court acted beyond its judicial authority over the controversy before it and should properly have dismissed the action with prejudice. This panel need not decide whether an attorney can ever sue a prospective client for the purpose of seeking a Court Order forcing the client to retain the attorney. For the same reason, we do not address the issue of whether the Tribe's Employee Preference Policy Ordinance applied to this applicant.

CONCLUSION

It is the opinion of this Panel that the Tribal Court in this case acted beyond the scope of its judicial authority when it reached in and nullified votes of the Tribal Council, which equates with interfering with the authority expressly vested in the Tribal Council by the Stockbridge-Munsee Community Constitution.

Further, since the Motion for Contempt is intrinsically tied into the core issue that, the Tribal Court acted beyond the scope of its jurisdiction, the Order of Contempt of court entered against the Tribe is hereby vacated. If any sum of money has been paid under the Order, that amount shall be returned to the Tribe.

The Court of Appeals reverses and dismisses the Tribal Court's decision and order in Case No. 12-CV-0002 (7-25-12).